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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 714

GEORGE F. HARRINGTON,

Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA.

Appellee.

STATEMENT AS TO JURISDICTION.

Pursuant to Rule 12 (1) of the rules of the Supreme Court, appellant submits this statement showing that the appeal in the above entitled cause is properly before this Court.

A.

Statutory Provision Sustaining Jurisdiction.

The jurisdiction of this Court is invoked under United States Codes, Title 28, Sec. 344 (Sec. 237a Judicial Code).

B.

The Statute of the State Involved.

The State statute drawn into question and validity of which was sustained by the decision and judgment of the

Appellate Department of the Superior Court of Los Angeles County, is a city ordinance fully set forth in the Municipal Code of the City of Los Angeles (1936), Ordinance #77,000, Chapter 5, Article 3, Animals and Fowls.

The appellant contended in the courts of this State that Sections 53.15 and *5328* of said ordinance are null and void on their face and as applied to the appellant, and that they are repugnant to the Constitution of the United States, and deprive him of his liberty and property without due process of law, and deny him the equal protection of the laws as guaranteed by the Fourteenth Amendment.

Section 53.15a provides;—"Any person owning or having custody or control of one or more dogs shall pay for the privilege of keeping such dog, a license tax of two dollars ($2.00) for each male dog or spayed female dog * * * and four dollars ($4.00) for each female dog not spayed * * *."

Section 53.28 provides;—"No person shall have, harbor or keep any unlicensed dog."

A Municipal Ordinance is a State statute within the meaning of Sec. 344, Title 28, United States Codes (Sec. 237a Judicial Code) *Lovell* v. *City of Griffin* 303 U. S. 444.

C.

Finality of Judgment of Highest Court.

The judgment of the Appellant Department of the Superior Court of Los Angeles County forming the basis of this appeal was rendered September 24, 1941, and is final and disposes of all matters of the controversy in the Municipal Court, wherein the case was tried, and all matters presented to the said Appellate Department. *Kim Young* v. *Cal.*, 308 U. S. 154. Under the laws of this State, said Appellate Department is the highest court of this State in which such judgment could be had in this case. This

case is criminal action prosecuted by complaint in the Municipal Court of the City of Los Angeles as misdemeanor, and the Constitution of this State provides that;—"The district court of appeals shall have appellate jurisdiction from the superior courts * * * also on questions of law alone, in all criminal cases prosecuted by indictment or information, except where judgment of death has been rendered." Art. VI. Sec. 4b. Therefore no appeal lies to the higher courts. *Harbold* v. *A. T. & S. F. R.*, 117 Cal. App. 430. Sec. 1462 of Cal. Penal Code gives jurisdiction of misdeameanors to Municipal Courts, and Sec. 1466 of said Code gives appeal to Superior Courts.

The United States Supreme Court has taken appeals from the Appellate Department in similar cases.

Kim Young v. *Cal.*, 308 U. S. 154.

D.

Appeal Timely Taken.

The order and judgment from which this appeal is taken was entered September 24, 1941. Petition for rehearing was filed before judgment became final as determined by the rules of the Appellate Department. Rehearing was denied Oct. 3, 1941. On October 3, 1941, appellant filed with said Appellate Department his petition for appeal, assignment of errors, prayer for reversal, and the wherein statement as to jurisdiction. Order allowing appeal was entered October 3, 1941.

E.

Constitutional Question Sufficiently and Timely Raised.

Appellant's contentions that the two sections of the city ordinance above mentioned, are repugnant to the Fourteenth Amendment to the Federal Constitution, and deprive him of his liberty and property without due process

of law, and deny him the equal protection of the laws, and that the present Supreme Court of the United States would so declare; were asserted prior to arrest, and at the preliminary hearing, and during trial in the Municipal Court, and in his written petition for a new trial, and in his proposed statement on appeal to the Appellate Department, and in the engrossed statement on appeal allowed by the trial judge, and in appellant's petition to the Appellate Department to reinstate his proposed Statement on appeal, and in his points and authorities, and in his oral argument, and in his petition for a rehearing. The judgment of the Appellate Dept. is against appellant's contentions and is in favor of the validity of the ordinance in question, and is a final judgment in the highest court in this State wherein a decision can be had in this case.

F.

Nature of the Case:—Grounds Substantial.

Under the city ordinance in question, the appellant had the choice of paying the extortionate tax, surrendering his property or submitting to arrest. Therefore, the three vital questions arise:

I. Can an arbitrary, confiscatory tax be placed upon the right to own, harbor or keep any kind of property in the home?

II. Can property be confiscated by surrender under threat of such illegal tax or of arrest?

III. Can anyone be arrested, fined and imprisoned for the mere ownership, peaceful possession, harboring or keeping harmless property in his home?

A few courts have resorted to various subterfuges to justify such arbitrary, unreasonable, unjust, unappropri-

ate, unconstitutional acts; as, "Property in dogs is of an imperfect or qualified nature." * * * "It is a peculiar kind of property. * * * It extended to them less legal regard and protection." "The emergency may be such as not to admit of delay." * * * "But they stand on a different basis from other domestic animals." "In dogs there is at best an imperfect or qualified nature of property." * * * "A police regulation for reducing the number of mischievous dogs and securing the owners of the most valuable and harmless against unauthorized and wanton destruction." * * * "It is entirely within the power of the legislature to prohibit the ownership of dogs at all." * * * "The constitution has by direct grant, vested in them (cities) *plenary* power to provide and enforce such police, sanitary and other local regulation as they may determine * * *."

To refute such false assumptions, it becomes necessary to consider three other important matters which are not known in Fascist States, but which are vital in a democracy and are the very essence of freedom. These are: Inalienable rights, limitation of police power, Power and duty of courts.

Liberty, Justice and equality are the three inalienable rights which form the tripod upon which our Government rests, and without which it cannot stand. Liberty includes all of the freedoms known to civilization including the right to be free to choose any kind of pleasure, amusement, comfort, companionship, protection and property with the sole restriction that the rights of others shall not be abridged thereby.

Dogs are kept for these various purposes and, when kept in the home, the rights of none are abridged. Therefore the appellant has the inalienable right to keep this kind of property in his home. When this right is abridged or

denied, the appellant is deprived of his liberty without due process.

Liberty includes freedom from discrimination, or the right to equality. The appellant is free to choose any other animal or any other kind of property and he cannot be taxed arbitrarily, but must be taxed according to the value of that property. Because he chose a dog, he is discriminated against by the arbitrary tax, prohibited from keeping it, forced to surrender it without compensation, or arrested, fined and imprisoned. He is thus deprived of his liberty without due process and denied the equal protection of the laws.

Liberty includes freedom from persecution, which is also included under justice. Any tax is a restraint, but a reasonable, just, equitable, legal tax is a necessity for the protection of our rights. The arbitrary tax on dogs, confiscation of the property, and arrest, fine and imprisonment of the appellant are unreasonable, unnecessary and unappropriate restraints and are therefore persecution and a deprivation of liberty without due process of law. The appellant keeps his dog at home and does not permit it to run at large. The neighbors are never annoyed and none of their rights are abridged. The dog is an amiable, docile Cocker Spaniel, and barks only when someone comes to the door. To own such a dog and keep it at home is a harmless, innocent act and requires no restraint and certainly not more or greater restraint than is applied to keeping a horse, cow, cat, gun, ammunition, matches, and other property. This Court has frequently reversed convictions where the act charged against the so-called criminal was entirely innocent and harmless and where there was no clear and present danger.

Stromberg v. *Cal.*, 283 U. S. 359;
Fiske v. *Kansas*, 274 U. S. 380;
DeJonge v. *Oregon*, 299 U. S. 353, 364;

Cantwell v. *Conn.*, 310 U. S. 296, 308;
Herndon v. *Lowry*, 301 U. S. 242, 256;
Thornhill v. *Alabama*, 310 U. S. 88, 104, 105;
Carlson v. *Cal.*, 310 U. S. 106, 113.

When the appellant was arrested, and confined in jail, the public received no protection, as there was no clear and present danger prior thereto and no protection was necessary. Should the appellant pay the tax or surrender his dog, a like situation prevails; therefore the law is unnecessary.

When dogs are taken from those who are unable to pay the illegal tax, they are sold to others for a pound fee and the tax. Thus dogs kept at home by those unable to pay the tax are harming no one. When confiscated and sold and allowed to run at large, they can and often do damage and destroy property, and frighten and injure children and adults, or cause traffic accidents. The payment of the tax and the dangling tag on the dog are not appropriate restraints to protect the public. Should the appellant surrender his amiable, docile dog, and if that dog were destroyed by the Humane Dept. the public would receive no protection by such reduction of harmless animals kept in the home. It is contended by some courts that it tends to reduce the number of worthless dogs. This is untrue, as the dog kept by a poor family may have worth beyond dollars, and may be its sole means for the pursuit of happiness by the members of that family. It cannot be contended that it tends to reduce the number of vicious dogs, as anyone may keep a vicious dog if the tax is paid. It is not unlawful to keep a dog, or to allow the dog to run at large, unmuzzled, unleashed, unfettered and unrestrained in every way. That illegal tax is the sole criterion of crime. If only that tax is paid, the public is thoroughly protected. The dog is turned loose to annoy cyclists, frighten and

injure children, fertilize and irrigate, cultivate and depredate lawns, gardens, shrubs, poultry yards and rabbit pens. This clearly indicates that the restraints placed upon the right to own this kind of property, are unreasonable, unappropriate and unnecessary and amount to persecution and deprive appellant of his liberty and property without due process of law.

PROPERTY IN DOGS: All adverse decisions in these dog dilemmas are based upon the false assumption that there is but an imperfect or qualified property in dogs. Property in dogs owned in California is full, complete and equal to property in any other domestic animal, and in all other things possessed and used about the home and farm. "The word property as used in this article and section, is hereby declared to include * * * and all other matter and things real, personal, and mixed, capable of private ownership." (Cal. Con. Art. XIII sec. 1; Rev. & Tax. Code sec. 103; Pol. Code sec. 3617.) "Fourth. The term 'personal property' includes everything which is the subject of ownership not included within the meaning of the term 'real estate and improvements'." (Pol. Code sec. 3617.) "In this Code, the thing of which there may be ownership is called property." (Civil Code sec. 654.) "There may be ownership of all inanimate things * * *; of all domestic animals;" * * * "Animals wild by nature are the subject of ownership while living, only when on the land of the person claiming them, or when tamed, or taken or held in possession." (Cal. Civil Code sec. 654 and 655.) "Dogs are personal property." (Cal. Penal Code sec. 491.) See also:

Roos v. *Loeser*, 41 Cal. App. 782, 85;
Peo v. *Fimbres*, 107 Cal. App. 778, 80;
Hicks v. *Sullivan*, 122 Cal. App. 635, 37;
Dryer v. *Cyriacks*, 112 Cal. App. 279;

Johnson v. *McConnell,* 80 Cal. 545, 49;
Laverone v. *Mangianti,* 41 Cal. 138.

"Modern conception of dogs," 1 R. C. L. (1929) 1114, sec. 58, 2 Am. Jur. (1936) 693, sec. 7; 17 R. C. L. 32, sec. 35 (1929).

POLICE POWER: Under the police powers granted to government under our constitutions, the city counsel has the power, authority and duty,

To make and enforce such local, police, sanitary and other regulations necessary for the protection, security and benefit of the people;

To establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of liberty;

To secure the inalienable rights, among which are life, liberty, equality and the pursuit of happiness.

All regulations must be necessary, appropriate and reasonably adapted to accomplish the purposes for which democratic governments are established. Regulation must tend to eliminate some pre-existing evil. Restraint cannot be placed upon harmless and innocent use of property. This Court has ruled against *previous restraint* where it infringes upon constitutional rights;

Cantwell v. *Conn. supra* p. 304;
Near v. *Minn.* 283 U. S. 697, 713, 714;
Stromberg v. *Cal.* 283 U. S. 353.

What a man owns and possesses in his home in *consonance with peace and good order* is no concern of others or the government. A dog kept in the home that neither barks, bites nor destroys property of others is no concern of anyone but the owner. The dog kept in the home needs no regulation. The dog at large needs regulation and restraint. Here is the clearly defined limit of police power.

That limit is exceeded when the right of ownership and possession is declared a privilege and the payment of the arbitrary tax required before one can own or keep a dog or any other kind of property. It is not within the province of the police power to change innocence into guilt, or punish innocence as a crime, and arrest and convict a person for enjoying his rights without harm to others by merely keeping his property in his home. These unlawful regulations are not included in granted police powers and are despotic governmental usurpation, and not due process of law. A few courts had the delusion that police power is omnipotent, plenary and absolute. They have mistaken this democratic nation for a Fascist State. Volumes of cases could be cited, but this Court has a clear understanding of the limitation of police power as indicated in *Hague* v. *C. I. O.* 307 U. S. 496, and other cases above written. All adverse decisions are based upon this fallacious presumption, and therefore are not good authority. The "clear and present danger", "innocent act" and "previous restraint" rules followed in cases cited are appropriate rules to apply where any right is restrained.

COURTS POWER AND DUTY.—Democratic governments are established to protect, in the highest degree, all of the rights of free people. This government is divided into three separate divisions, each supreme within its own field of power and duty. Each to be a check upon the other, so that the fundamental rights of the people are not unnecessarily abridged. When any of these rights are abridged by any branch of our government, it is the duty of one or the other remaining branches to check the abuse, when called upon to do so. Any evasion, by subterfuge or otherwise, is not due process of law, and is discrimination against petitioner. Any transgression or excessive use of power is not due process of law, and is discrimination against the victims. "Congress and the courts both unhappily may falter or

be mistaken in the performance of their constitutional duty." *U. S.* v. *Butler* 297 U. S. 1, 87; Stone J. dissenting.

Appellant contends that all adverse cases and decisions are errors on their face, by upholding unnecessary abridgment of inalienable rights; by the subterfuge of declaring that dogs are not full property, that they are not equal to other domestic animals and other personal property under the laws; and by the false assumptions that the police power of the State is absolute, plenary and omnipotent, and that constitutional guaranties do not apply to dogs and dog owners. Any court that uses such void decisions as authority, and bases its decision and judgment upon them is derelict in duty and such judgment is likewise void and not due process of law. "While these regulations are more than ordinarily stringent, and might be declared to be unconstitutional, if applied to domestic animals generally."

Sentell v. *New Orleans &c.*, 166 U. S. 698, 706.

Compare—Dissenting opinions by Brown J. in
St. Louis v. *Western Union Tel.* 148 U. S. 105;
Scott v. *Donald* 165 U. S. 91.

Some courts recount all the benefits of our constitutional guaranties and finish with a denial. "It is a case frequent in all our experiences in life, where the performance and the promise are sadly at varience."

Chicago R. C. v. *Chicago* 166 U. S. 259 (dissent).

All of the adverse decisions indicate that the rules of "clear and present danger", "innocent acts", "previous restraint" and "use your own rights as not to injure others" were totally ignored by the courts. When the Appellate Dept. used decisions as a basis, that were based upon these illegal and unreasonable and false assumptions, the appellant was denied due process of law and equal protection of the laws.

The three vital questions involved:

I. Can an arbitrary, confiscatory tax be placed upon the right to own, harbor or keep any kind of property in the home? Appellant contends that owning, keeping and using property are inalienable rights. The right to own property carries with it the right to keep, harbor, buy, sell, trade, destroy or otherwise use without injury to others. The right to keep property in the home cannot be declared or converted into a privilege, as is done by the ordinance in question. This is not within the power of the city counsel. The law is therefore void and is not due process of law.

Phillips v. *Lewis* 3 Tenn. (Shan.) 230, 245;
Stevens v. *State* 2 Ark. 291;
Gibson v. *Pulaski,* 2 Ark. 309;
State v. *Frame,* 39 Ohio s 399, 413;
Knowlton v. *Moore,* 44 L. Ed. 970, 975.

An unjust, illegal, arbitrary per capita tax on the right of owning and keeping property, is a tax on the property, and is unconstitutional and void.

Dawson v. *Ky. Dis.,* 255 U. S. 288, 294;
Gulf R. C. v. *Hewes,* 183 U. S. 66, 77;
Washington R. C. v. *Reid,* 13 Wall. (80 U. S.) 264, 168;
Hixon v. *School Dist.,* 187 Ark. 554;
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Thompson v. *Kreutzer,* 112 Misc. 165;
Flint v. *Stone Tracy,* 220 U. S. 107, 149;
Smith v. *Court CC.,* 117 Ala. 196;
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Coml v. *Bean,* Thacher's Cr. Cas. 85, 99;
State v. *Vauthier,* 135 La. 766;

Fagan v. *Humane*, 6 Ohio NP 357;
Reser v. *Umatilla*, 48 Ore. 326;
Matthews v. *Jensen*, 21 Utah 207;
Phillips v. *Lewis, Supra*;
Stevens v. *State, Supra;*
Gibson v. *Pulaski, Supra.*

"It is an established principle that the attainment of a prohibited end may not be accomplished under the pretext of the exertion of powers which are granted."
U. S. v. *Butler*, 297 U. S. 1, 68.

The California constitution Declares;—"All property in the State • • • shall be taxed in proportion to its *value*" Art. XIII Sec. 1. "The Legislature shall have power to provide for the assessment, levy and collection of taxes upon *all* forms of tangible personal property • • • in a manner and at a rate or rates in proportion to *value* • • • and *no tax burden* shall be imposed upon *any* personal property, • • • which shall exceed the tax burden on real property • • • in proportion to the *actual value* of such property." Art. XIII Sec. 14.

As the ownership and possession of property are inalienable rights, and they cannot be converted into a privilege, and as they must be taxed "in proportion to the actual value", and as dogs in California are property, personal property, domestic animals; therefore this arbitrary, per capita, unjust, unreasonable, discriminatory and confiscatory tax is unconstitutional and not due process nor equal protection of the law; and is repugnant to the Fourteenth Amendment.

II. Can property be confiscated by compulsory surrender under threat of such illegal tax or of arrest?

It is a well established principle of democratic law that no person can be deprived of his property in any manner

except through well established legal procedure, unless there is "clear and present danger" to the life liberty and property of others. Property which is inherently evil or dangerous may be regulated only so far as to eliminate the evil or danger, and may be prohibited altogether if regulation does not give sufficient protection. Nuisances can be abated by due court action or by summary methods when delay would be fatal; but the restraint cannot go beyond that which is necessary to give the protection appropriate and reasonable. Harmless property, peacefully and harmlessly possessed and kept in the home is beyond the jurisdiction of the city council and that body cannot order its confiscation, and when done it constitutes a taking of property without due process of law, in violation of the Fourteenth Amendment.

Phillips v. *Lewis,* 3 Tenn. (Shan.) 230;
Com. v. *Bean,* Thacher's Cr. Cas. 85;
Fagan v. *Humane,* 6 Ohio N. P. 357;
Rose v. *Salem,* 77 Ore. 77;
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3 McQuillin Muni. Corp., p. 89.

III. Can a person be arrested, fined and imprisoned for the mere ownership, peaceful possession, harboring or keeping harmless property in his home? As owning and keeping property in the home are inalienable rights, a person has the right to do so in any manner he chooses so long as no one is injured thereby, or their rights abridged in any manner. The appellant was convicted for harboring an unlicensed dog. The dog was not disturbing the peace and quiet of the city, not destroying any property, nor injuring any person, nor running at large, merely being a good house dog. There was no evidence that the dog committed any harm or that any harm came to anyone by merely harboring this dog. If the dog were licensed, the appellant would be permitted to turn the dog loose upon the public streets, where it would be free to injure and destroy children, adults, animals and other property, should it so decide. This threat or evil use would be permitted and would not constitute a crime, while the innocent act of keeping the dog at home which is no evil, is declared a crime. Certainly, if it is not a crime to commit the evil of permitting a licensed dog to run at large, it cannot be declared a crime to do that which is less evil, or no evil. If it is not a crime to own and keep a horse, cow, goat, monkey or other animal, how can it be declared a crime to keep a dog in your home? This is arbitrary, unreasonable, unappropriate and discriminatory legislation, and is not due process nor equal protection of the laws.

Washington v. *Meigs,* 1 McArthur (D. C.) 53;
State v. *Vauthier,* 135 La. 766;
Coml. v. *Savitsky,* 6 Pa. D. & C. 368;
Cranston v. *Augusta,* 61 Ga. 572.

Grounds Substantial—Decision Necessary.

There is no question more vital or more substantial in a democracy, than a question involving those fundamental rights which distinguish it from a totalitarian state. The inalienable rights of Liberty, Justice, Equality, Pursuit of Happiness, Domestic Tranquility and the right to own and peacefully possess Property are the issues in this case. Liberty Is a Broad Term and includes all the others. All are guaranteed by the Fourteenth Amendment to the Federal Constitution. Any law which requires that an arbitrary tax be paid before a person can possess any kind of property, is an infringement of these rights. Any law which makes it a crime to keep harmless property in a peaceful manner, is an infringement of these rights. Any law which confiscates harmless property peacefully kept in the home, is an infringement of these rights. Any court which uses subterfuges and false assumptions to evade its duty is as much at fault as the legislative body which made the law.

A decision of this Court is essential because on two previous occasions, dog license cases were decided on the false assumptions so common to such cases, and upon prior cases and authorities who were confused over the status of dogs as property, and as to what extent they should be regulated, and as to the limitation of the police power of the state. When this controversy is presented to reasonable, unbiased, unprejudiced men, they cannot arrive at any other decision than those cited above. The dog license racket evidently started in the days when the rich and politically powerful sheep owners controlled the sparsely settled States, and made laws to their own liking and benefit, just as the despotic quick shooters ruled many mining camps. The time has come to remove this totalitarian blot. If our zealous legislators are interested in good democratic government, they can regulate dogs running at large so that

they will not destroy lawns, gardens, poultry, rabbits and other pets; or fertilize and irrigate the sidewalks, lawns, gardens, porches, steps, doors and automobile wheels belonging to others. These are petty annoyances and one would feel silly going into court for redress. Many dogs are poisoned, crippled or shot on that account.

Under several dog license laws the Fascist practice of taking property from one person without a judicial decree, and giving it to another was considered due process of law. Recently, the Norwegians were ordered to surrender their wool blankets to their conquerers, under pain of death. The crime is possessing a wool blanket, the penalty is surrender it or die and lose it anyway. In Free America, they say pay the extortion, surrender your dog or go to jail. In Nazi occupied territory, they shoot ten innocent persons who had nothing to do with the crime, when one of the oppressors is sniped. In Free America, the dog owner is forced to pay tribute to maintain a fund to reimburse sheep owners for loss of sheep destroyed by coyotes, foxes or dogs belonging to others. The sheep indemnity fund is collected from those not guilty of the crime just like the practice of the Nazis, but they wait until the crime is committed, whereas this fund is collected whether or not damage is done and before it is done. This is *previous restraint* on innocent victims for pursuing *innocent acts.* Should these victims be legally tried for the offense of sheep damage, they would have opportunity to prove their innocence, and then be free from persecution; but under this practice, they are denied the constitutional protection, adjudged guilty, and penalized before any crime was committed. In Free America, courts have upheld these laws, and called that totalitarian practice due process of law.

In *Nicchia* v. *New York,* 254 U. S. 228; the court based its decision upon the subterfuge that property in dogs is of base and imperfect nature, and certainly did not analyze

the important basic principles underlying the objections to such despotic laws.

In *Sentell* v. *New Orleans & C.*, 166 U. S. 698; the court which tried the case, awarded damages to Sentell for the loss of his valuable dog, killed on the street by a train. The Court of Appeals reversed the decision. The Supreme Court sustained the decision of reversal. The trial court held that the dog was not tagged, as required by the city ordinance, could not affect the right of the plaintiff to recover; and that the act of the legislature was unconstitutional as destructive of the right of property; and was in conflict with the constitution of the United States, providing that no person shall be deprived of his life, liberty or property without due process of law. This is sound, sane, intelligent reasoning and showed a clear understanding of the basic principles of democratic government. No objection can be taken to it, by intelligent, unbiased persons. It would stand unshaken if the property in question were anything but a dog. That court fulfilled its oath of office by rendering such decisions, and why not? Any contrary decision can be explained on only two grounds, and ignorance isn't both. The violation of law by one, does not give to another the right to violate the same or another law. Violation of law by one is no defense for another except in protection of his life or property, and a few similar cases. The railroad company had no prior right to kill another's dog merely because it loitered on the track, even had the law given it that authority. The people of that State had no power to outlaw any kind of personal property eligible for assessment. Inherently evil or dangerous property must be prohibited to protect the public, and cannot be permitted merely by having it assessed. That gives no additional protection.

On the other hand, when considered by the Supreme Court, it indulged in guessing, presumption and supposition—not

commendable behavior under the circumstances. At page 700, the Court of Appeals "were *evidently* of the opinion." It presumed that "they were without the protection of the criminal laws" because a few like courts likewise presumed the same thing, and "that shows that property in dogs is of an imperfect or qualified nature." At page 701, "They are not considered as being upon the same plane with horses, cattle, sheep and other domestic animals." "They have no intrinsic value." They presumed that dogs were not property and had no value, because some courts said so. Would the moon become green cheese if some court said so? At page 701, the court presumed that all dogs are subject to hydrophobic madness. Facts do not bear this out, any more than all people are subject to leprosy. The percentage of actual cases of rabies is very low, yet these few cases are worthy of attention and prevention; but this cannot and will not be done as long as such asinine legislation and decisions permit the financial racket to exist. The 1939-40 Los Angeles County Health Report shows a *five* year history of reportable diseases, which (page 33) lists a total of *three* cases of Human Rabies in the entire County, including all cities. The population of the County was 2,777,211 as listed on page 48. The annual Report of Los Angeles City Board of Health June 30, 1940, page 12, under reportable diseases, for *two* years prior, lists *zero* cases of Human Rabies, with a population of one and one-half million people, and one hundred six thousand dogs licensed to run at large in the city.

The court presumed that the owner of a valuable dog would comply with the law, whereas the owner of the so-called worthless dog would not or could not, and therefore forced to yield to persecution. Such legislation is really directed against the latter class, those too poor to buy the necessities of life. They are deprived of the right to possess this kind of property, while others are not only permitted to own

and possess a dog, but are licensed to turn it loose to damage and destroy the persons and property of others. The court presumed that the docile dog kept in the home of the poor was a nuisance, while a vicious dog licensed to run at large, could do no harm by reason of the magic brass charm dangling from its collar, and the payment of the tax. At page 701, the court continues, "Acting upon the principle that there is but a qualified property (702) in them." At page 705, the court continues, "So far as property is *inoffensive and harmless,* it can only be condemned or destroyed by *legal proceedings.*" At page 706, "While these regulations are more than ordinarily stringent, and *might be declared to be unconstitutional,* if applied to domestic animals generally." They admit the unconstitutionality of such discriminatory, confiscatory, unreasonable law, but if applied to dogs and dog owners anything will be condoned. The court in both cases ignored the "clear and present danger," "previous restraint" and "innocent act" rules of this Court. The court confused ownership and keeping, with running at large and with obnoxious business pursuits.

In re *Ackerman,* 6 Cal. App. 5, the court erroneously presumed that Article Eleven, Section Eleven of the California Constitution abrogated the *Bill of Rights* and that the police power of a city council was plenary and absolute. "Provided such regulations do not conflict with general laws" (p. 10). "The only test is, therefore, do such regulations conflict with general law?" (pp. 10, 19). "If they do not then they have binding authority * * *" (p. 10). "And the legislature has no authority to limit the exercise of the power there directly conferred upon cities" (pp. 10, 19). It is indeed a tragic condition when the guardians of our rights stray so far afield in misconstruing the powers and duties of the various branches of our democratic gov-

ernment. By these statements that court decreed that the Bill of Rights of the California Constitution and the Fourteenth Amendment to the Federal Constitution had no force and effect, and that the legislature could not pass any law which limited the power of cities. The only check on this power was the general laws in existence at the time that section of the constitution was adopted. And at this day courts insist that this a good democratic law and due process of law, and cite this case to justify depriving appellant of his liberty and property without due process of law, and denying him the equal protection of the laws.

A careful analysis of the decision will disclose it to be a masterpiece of contradictions and false assumptions. "The ordinance here does not, * * * attempt to interfere with ownership of dogs" (p. 18). Every intelligent person knows that a poll and per capita tax falls heavily upon the poor and is a prohibition on the property and privilege so taxed. "The dog became a domestic animal originally by virtue of legislative enactment" (p. 16). Is this possible? Could a piano be converted into a domestic animal by legislative enactment? Could a lion become a domestic animal by legislative enactment? Or would it have to be tamed and associated with the home, domesticated? "No American court has ever questioned the right under the police power to regulate the control, management or use of dogs" (p. 18). This is nothing short of presumed omniscience. The cases cited by the appellant speak for themselves.

Now for a few contradictions: "For the privilege of owning," "For the privilege of such ownership" (p. 13) *contra*; * * * "What privilege a dog owner receives * * * is that a dog * * * is under the special protection of the law, suffered to run at large with *impunity*" (p. 20). "It shall be the duty of the marshal to seize and impound any dog owned or harbored" * * * (p. 7).

contra; * * * "The marshal would of course have no right to go upon the private premises * * * without being armed with process, except where * * * he might himself witness the commission of a crime" (p. 14). The ordinance makes it a crime to own or harbor, the marshal could witness it. After repeatedly stating that the ordinance was reasonable, important, wholesome, salutary regulation, the court stated: "The regulation requires nothing else * * * than the payment of the license" (p. 15). "To effectually accomplish this end, the owner of the dog * * * is required to pay a license tax" * * * (p. 13). "It provides that the owner of the dog, * * * shall attach to a collar * * * a seal or device. It further provides the enforcement of a penalty for a noncompliance with the law, or for the doing of some prohibited act and in this manner the power of the police is exercised" (p. 16). According to this reasoning the power of the police could be exercised to prohibit one from wearing tan shoes, then charge a license tax on the privilege, and arrest anyone not licensed to wear tan shoes; and that would be wholesome salutary legislation. And still, in this enlightened day, courts will approve this illogical and totalitarian reasoning.

"Every person who owns or harbors a dog shall pay * * *" (p. 7). "For the privilege of owning is required to pay * * *" (p. 13). "For the privilege of such ownership is required to pay" (p. 13). *contra*; "There is no power in municipal or other authorities to prohibit the ownership of dogs, any more than there is such power to prohibit the ownership of any other species of property" (pp. 15, 18). "We think that perhaps in one part of the main opinion we unhappily used language which might imply that we held that a license for regulatory purpose might be imposed upon the ownership of dogs. What we

intended to say * * * is that a license tax upon dogs may be imposed, as an incident of the regulation of * * *" (p. 16). What an insidious masterpiece of subterfuge. What the authorities could not prohibit directly, they could indirectly by an exorbitant license tax.

These three decisions and the opinions, together with like ones underlying them, are all based upon fallacious assumptions, insidious subterfuges and false assertions as above indicated. These devices were used to justify flagrant encroachments upon those inalienable rights herein asserted. Local courts are concerned only with protecting this political racket, which amounted to $264,028 for 1940-41, and $247,106 for year ending June 30, 1940. These decisions and opinions are not the law of this democracy, they are the fruit of despotic, totalitarian, Fascist minds and have no place in our scheme of life, and should at this day be overruled in such a manner and with such vehemence that no further doubt and confusion and persecution can exist in the matters involved. This Court is now called upon to carefully consider the three salient questions presented; to declare an arbitrary tax on ownership and possession of a dog in the home, void; to declare void this ordinance which criminalizes mere ownership and possession of a dog in the home; to declare unconstitutional, as repugnant to the due process and equal protection clauses of the Fourteenth Amendment, the two sections of the city ordinance here questioned.

Right of Appeal in Person.

The appellant respectfully requests the right to appear in person, to defend to conclusion this criminal defense, as permitted by law.

28 U. S. Codes sec. 832;

28 U. S. Codes sec. 394;

Heiskell v. *Mozie*, 82 F. (2d) 861;
Merrick v. *Amer. Sec.* 107 F. (2d) 271;
Peo v. *Rose*, 183 P. 879; Cal. App. (1919), 8 Cal. Jur. sec. 505.

Respectfully submitted,

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Los Angeles, Cal.

Dated Oct. 3, 1941.

EXHIBIT "A".

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

Superior Court No. CR A 1828.

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff and Respondent,*

vs.

GEORGE F. HARRINGTON, *Defendant and Appellant.*

Trial Court No. 6071.

On Appeal from the Municipal Court of the City of Los Angeles.

County of Los Angeles, State of California.

LEROY DAWSON, Judge.

This cause having been argued and submitted, and fully considered, judgment is ordered as follows:

It is ordered and adjudged that the judgment, made and entered in the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California, in the above entitled cause be and the same is hereby affirmed.

Memo.

In re Ackerman (1907) 6 Cal. App. 5, holds that it is a valid exercise of the police power for a city to pass an ordinance requiring dog owners to pay an annual license. That case is clear and is still the law of this state.

The argument that such an ordinance deprives the defendant of his liberty and property without due process of law in violation of the Fourteenth Amendment to the Federal Constitution is satisfactorily answered in the negative by the United States Supreme Court in *Nicchia* v. *New York* (1920), 254 U. S. 228, 65 L. ed. 235.

FOX,
Judge.

I concur.

BISHOP,
Judge.

September 24, 1941